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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. *2008-329*

Gary A. LAUBER
784 Northridge Mall - PMB 108
Salinas, CA 93906

A C C U S A T I O N

Registered Nurse License No. 510252
Public Health Nurse License No. 56191

Respondent.

Complainant alleges:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about March 30, 1995, the Board of Registered Nursing issued Registered Nurse License Number 510252 to Gary A. Lauber (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2008, unless renewed.

3. On or about September 11, 1996, the Board of Registered Nursing issued Public Health Nurse License Number 56191 to Gary A. Lauber (Respondent). The Public Health Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2008, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

7. Section 2761 of the Code states in pertinent part that:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct,

8. Section 125.3 of the Code provides, in pertinent part, that the Board may

administrative law judge to direct a licensee found to have committed a violation or

the licensing act to pay a sum not to exceed the reasonable costs of the investigation

1 and enforcement of the case.

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3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct)

5 9. Respondent is subject to disciplinary action under section 2761(a),
6 unprofessional conduct, in that respondent, while employed as a Senior Medical Assistant
7 (SMTA) for the Department of Mental Health, Salinas Valley Psychiatric Program at Salinas
8 Valley State Prison (SVPP), in Soledad, California, acted in violation of SVPP policies. The
9 circumstances are as follows:

10 a. On or about September 3, 2004, during the beginning phase of a "forced
11 medication" procedure on a patient inmate, respondent employed the unauthorized use of
12 Oleoresin Capsicum(OC) pepper spray, in violation of SVPP policies and procedures which do
13 not authorize nursing staff employed by the Department of Mental Health to themselves use OC
14 pepper spray.

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16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein
18 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 19 1. Revoking or suspending Registered Nurse License No. 510252, issued to
20 Gary A. Lauber.
- 21 2. Revoking or suspending Public Health Nurse License No. 56191, issued to
22 Gary A. Lauber.
- 23 3. Ordering Gary A. Lauber to pay the Board of Registered Nursing the
24 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
25 Professions Code section 125.3; :

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4. Taking such other and further action as deemed necessary and proper.

DATED: 5/20/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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llz 10/25/2006; rev. 05/15/2008
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